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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 DECHERI HAFFER,) Case No.: 1:20-cv-01426-NONE-JLT
12 Plaintiff,)
13 v.) ORDER DISMISSING THE COMPLAINT WITH
14 UNKNOWN,) LEAVE TO AMEND
15 Defendant.)
16)

17 On September 24, 2020, the plaintiff filed in the Central District of California a document
18 titled “Ex Parte Motion to Transfer Case to U.S. District Court.” (Doc. 1.) On October 6, 2020, the
19 Central District transferred the action to this Court. (Doc. 4.) On October 13, 2020, this Court issued
20 an order directing the plaintiff to file a motion to proceed *in forma pauperis* or pay the filing fee. (Doc.
21 6.) After reviewing plaintiff’s application (Doc. 9), the Court granted plaintiff’s motion to proceed *in*
22 *forma pauperis* on December 14, 2020. (Doc. 10). Because plaintiff fails to allege facts sufficient to
23 support her claims, the complaint is **DISMISSED** with leave to amend.

24 **I. Screening Requirement**

25 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
26 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
27 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
28 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2).

1 A plaintiff's claim is frivolous "when the facts alleged rise to the level of the irrational or the
2 wholly incredible, whether or not there are judicially noticeable facts available to contradict them."
3 Denton v. Hernandez, 504 U.S. 25, 32-33 (1992). In other words, a complaint is frivolous where the
4 litigant sets "not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke
5 v. Williams, 490 U.S. 319, 325 (1989).

6 **II. Pleading Standards**

7 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
8 pleading must include a statement affirming the court's jurisdiction, "a short and plain statement of the
9 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
10 include relief in the alternative or different types of relief." Fed. R. Civ. P. 8(a).

11 A complaint must give fair notice and state the elements of the plaintiff's claim in a plain and
12 succinct manner. Jones v. Cmty. Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). The
13 purpose of the complaint is to inform the defendant of the grounds upon which the complaint stands.
14 Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002). The Supreme Court noted,

15 Rule 8 does not require detailed factual allegations, but it demands more than an
16 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
17 labels and conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
factual enhancement.

18 Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
19 and conclusory allegations do not support a cause of action. Ivey v. Board of Regents, 673 F.2d 266,
20 268 (9th Cir. 1982). The Court clarified further,

21 [A] complaint must contain sufficient factual matter, accepted as true, to "state a claim
22 to relief that is plausible on its face." [Citation]. A claim has facial plausibility when the
23 plaintiff pleads factual content that allows the court to draw the reasonable inference that
24 the defendant is liable for the misconduct alleged. [Citation]. The plausibility standard is
25 not akin to a "probability requirement," but it asks for more than a sheer possibility that
a defendant has acted unlawfully. [Citation]. Where a complaint pleads facts that are
"merely consistent with" a defendant's liability, it "stops short of the line between
possibility and plausibility of 'entitlement to relief.'

26 Iqbal, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
27 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
28 conclusions are not entitled to the same assumption of truth. Id. The Court may grant leave to amend a

1 complaint to the extent deficiencies of the complaint can be cured by an amendment. Lopez v. Smith,
2 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

3 **III. Section 1983 Claims**

4 An individual may bring an action for the deprivation of civil rights pursuant to 42 U.S.C. §
5 1983, which states in relevant part:

6 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of
7 any State or Territory or the District of Columbia, subjects, or causes to be subjected, any
8 citizen of the United States or other person within the jurisdiction thereof to the deprivation
of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable
to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

9 42 U.S.C. § 1983. To state a cognizable claim under Section 1983, a plaintiff must allege facts from
10 which it may be inferred (1) he was deprived of a federal right, and (2) a person or entity who
11 committed the alleged violation acted under color of state law. West v. Atkins, 487 U.S. 42, 48
12 (1988); Williams v. Gorton, 529 F.2d 668, 670 (9th Cir. 1976).

13 **IV. Factual Allegations**

14 Plaintiff alleges that she has suffered mistreatment, including alleged forced psychiatric
15 medication, transfers to mental hospitals, denial of a fair trial, “abuse of force, to prevent [plaintiff]
16 from speaking on the record,” imprisonment for more than a year for a trespassing infraction, unlawful
17 eviction, housing discrimination, and retaliation, among other things, and asserts that the Kern County
18 Superior Court has no jurisdiction over “federal housing discrimination.” (Doc. 1 at 2-3, 7, 9.)¹

19 Plaintiff describes an alleged incident on October 1, 2013 when she was thrown to the ground,
20 placed in handcuffs, and dragged by a Kern County Sheriff’s Deputy, who arrested her for prostitution
21 and resisting arrest. (Id. at 4-5.) Plaintiff asserts that she filed a lawsuit against the Kern County
22 District Attorney’s Office around March 10, 2014 seeking \$48,000,000, and claims several former
23 members of that office are now judicial officers on the Kern County Superior Court, which “controls
24 the Bakersfield U.S. District Court Jury [selection], resulting in bias by “all Judges at the United
25 State[s] Court on 19th Street Bakersfield, CA.” (Id. at 5-8, 12.) Plaintiff also alleges certain people in
26 Bakersfield have discriminated against her in evicting her from their hotels, resulting in plaintiff filing
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28 ¹ The Court notes that the pages in the filing were disorganized as filed, and the pages referenced are those noted on the
filing by plaintiff. (See Doc. 1.)

1 a lawsuit seeking one billion dollars against them. (*Id.* at 8, 10-14.) Plaintiff claims that at a hearing on
2 her civil case, the judge did not allow her to speak and ruled against her. (*Id.* at 15.) Plaintiff asserts
3 she is “Illegally Denied an (O.R.) Release on (OR) misdemeanor allegations.” (*Id.* at 16.)

4 **V. Discussion and Analysis**

5 The filing appears to be a motion to transfer the case, rather than a complaint. (*See* Doc. 1.) As
6 currently drafted, the plaintiff’s filing does not contain enough factual details to permit the Court to
7 draw the reasonable inference that any defendants are liable for the misconduct alleged. *See Iqbal*, 556
8 U.S. at 678. Plaintiff’s complaint does not comply with the requirements of Rule 8(a). Moreover,
9 plaintiff fails to identify any named defendants in the caption. The Court will grant plaintiff leave to
10 file an amended complaint to allow plaintiff to set forth her claims and provide additional and specific
11 factual details to the Court.

12 **A. Failure to Name Defendants**

13 As a preliminary matter, the Court notes that plaintiff does not identify any defendants on the
14 caption page of the filing. *See* Fed. R. Civ. P. 10(a) (requiring that the title page of a complaint “name
15 all the parties”). This does not constitute a fatal defect. *Silvis v. California Dept. of Corrections*, No.
16 1:07-cv-00332-LJO-GSA PC, 2009 WL 806870, at *1 (E.D. Cal. Mar. 26, 2009) (Plaintiff’s failure to
17 name Defendant in the caption does not preclude him from pursuing a claim against Defendant “if the
18 allegations in the body of the [complaint] make it clear he is an intended defendant”) (citing *Rice v.*
19 *Hamilton Air Force Base Commissary*, 720 F.2d 1082, 1086 (9th Cir. 1983)). However, to avoid
20 confusion, plaintiff is directed to list the names of all defendants she intends to sue in the caption of
21 any amended pleading she may file.

22 **B. Liability of the Arresting Officers**

23 Plaintiff describes an alleged incident on October 1, 2013, where plaintiff alleges that she was
24 thrown to the ground, placed in handcuffs and dragged by a Kern County Sheriff’s Deputy, arresting
25 her for prostitution and resisting arrest. (Doc. 1 at 4-5.)

26 The Supreme Court of the United States determined the Due Process Clause of the Fourteenth
27 Amendment protects individuals who have not yet been convicted of a crime “from the use
28 of excessive force that amounts to punishment.” *Graham v. Connor*, 490 U.S. 386, 388 (1989).

1 However, allegations of excessive force during an arrest are analyzed under the Fourth Amendment,
2 which prohibits arrests without probable cause or other justification. Id. ("claim[s] that law
3 enforcement officials used excessive force in the course of making an arrest, investigatory stop, or
4 other 'seizure' . . . are properly analyzed under the Fourth Amendment's 'objective reasonableness'
5 standard"); see also Chew v. Gates, 27 F.3d 1432, 1440 (9th Cir. 1994) ("the use of force to effect an
6 arrest is subject to the Fourth Amendment's prohibition on unreasonable seizures"). The Supreme
7 Court explained:

8 As in other Fourth Amendment contexts . . . the "reasonableness" inquiry in an excessive
9 force case is an objective one: the question is whether the officers' actions are "objectively
10 reasonable" in light of the facts and circumstances confronting them, without regard to their
11 underlying intent or motivation. An officer's evil intentions will not make a Fourth
Amendment violation out of an objectively reasonable use of force; nor will an officer's
good intentions make an objectively unreasonable use of force constitutional.

12 Graham, 490 U.S. at 396-97 (1989) (internal citations omitted). In applying this standard, the Ninth
13 Circuit instructs courts to consider "the totality of the circumstances and . . . whatever specific factors
14 may be appropriate in a particular case." Bryan v. MacPherson, 630 F.3d 805, 826 (9th Cir. 2010).

15 In Graham, the Supreme Court set forth factors to be considered in evaluating whether a use of
16 force was reasonable, "including the severity of the crime at issue, whether the suspect poses an
17 immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or
18 attempting to evade arrest by flight." Id., 490 U.S. at 396 (citing Tennessee v. Garner, 471 U.S. 1, 8-9
19 (1985)). The Court may also consider "whether officers administered a warning, assuming it was
20 practicable." George v. Morris, 736 F.3d 829, 837-38 (9th Cir. 2013) (citing Scott v. Harris, 550 U.S.
21 372, 381-82 (2007)). Ultimately, the "reasonableness" of the actions "must be judged from the
22 perspective of a reasonable officer on the scene, rather than with the 20/20 vision of
23 hindsight." Graham, 490 U.S. at 396.

24 Assuming all facts alleged in the filing as true, it appears the facts alleged could support a
25 claim for excessive force against the arresting officers. See Watkins v. City of Oakland, 145 F.3d
26 1087, 1090-93 (9th Cir. 1998); Priester v. City of Riviera Beach, 208 F.3d 919, 927 (11th Cir. 2000).
27 However, plaintiff's filing does not identify the arresting officers and does not include complete
28 factual allegations related to the incident, such that the Court can determine whether there exists a

1 cognizable claim for excessive force. Plaintiff will be provided an opportunity to file an amended
2 pleading curing these deficiencies.

3 **C. Housing Discrimination**

4 It appears plaintiff is attempting to state a claim for housing discrimination. Plaintiff alleges
5 certain people in Bakersfield have discriminated against her in evicting her from their hotels, resulting
6 in plaintiff filing a lawsuit seeking one billion dollars against them. (Doc. 1 at 8, 10-14.)

7 The Fair Housing Amendments Act ("FHAA") "extended the Fair Housing Act's protection
8 against discrimination in the sale or rental of housing to those with disabilities." Budnick v. Town of
9 Carefree, 518 F.3d 1109, 1114 (9th Cir. 2008). It is unlawful to "discriminate against any person in the
10 terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or
11 facilities in connection with such dwelling, because of a handicap." 42 U.S.C. § 3604(f)(2)(A). A
12 plaintiff can establish a discrimination claim under a theory of disparate treatment, or disparate impact,
13 or failure to make reasonable accommodations. See Budnick, 518 F.3d at 1114 (9th Cir.
14 2008); Gamble v. City of Escondido, 104 F.3d 300, 304-05 (9th Cir. 1997).

15 Disparate treatment means a disabled person is treated less favorably than a non-disabled
16 person because of the person's disability. See Budnick, 518 F.3d at 1113-14; Int'l Bhd. of Teamsters v.
17 United States, 431 U.S. 324, 335 n. 15 (1977). Disparate impact means actions that while a defendant
18 may not have intended to discriminate against a disabled person, the actions still had a discriminatory
19 effect. See Budnick, 518 F.3d at 1118; Int'l Bhd. of Teamsters, 431 U.S. at 335 n. 15.

20 Discrimination in the rental of housing includes the "refusal to make reasonable
21 accommodations in rules, policies, practices, or services, when such accommodations may be
22 necessary to afford [the disabled individual] equal opportunity to use and enjoy a dwelling." 42 U.S.C.
23 § 3604(f)(3)(B). To show discrimination based on failure to provide a reasonable accommodation, a
24 plaintiff must demonstrate that: (1) he or she suffers from a handicap as defined by the Fair Housing
25 Act; (2) the defendant knew or reasonably should have known of the plaintiff's handicap; (3)
26 accommodation of the handicap may be necessary to afford plaintiff an equal opportunity to use and
27 enjoy the dwelling; and (4) defendant refused to make such accommodation. Giebel v. M & B
28 Associates, 343 F.3d 1143, 1147 (9th Cir.2003) (citation omitted). Whether a requested

1 accommodation is required "is highly fact-specific, requiring case-by-case determination." United
2 States v. California Mobile Home Park Mgmt. Co., 29 F.3d 1413, 1418 (9th Cir. 1994).

3 If plaintiff is seeking a raise a claim for housing discrimination, plaintiff fails to provide
4 enough factual details to support it. If plaintiff chooses to file an amended complaint, she shall
5 consider the above legal standards and correct the deficiencies.

6 **D. Mental Injury**

7 Plaintiff claims she has suffered mistreatment, including alleged forced psychiatric medication
8 and transfers to mental hospitals. (Doc. 1 at 7, 9.) Plaintiff is advised that the Prison Litigation Reform
9 Act provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or
10 other correctional facility, for mental or emotional injury suffered while in custody without a prior
11 showing of physical injury." 42 U.S.C. § 1997e(e). The physical injury "need not be significant but
12 must be more than *de minimis*." Oliver v. Keller, 289 F.3d 623, 627 (9th Cir. 2002)) (back and leg
13 pain and canker sore *de minimis*); see also Pierce v. County of Orange, 526 F.3d 1190, 1211-13 (9th
14 Cir. 2008) (bladder infections and bed sores, which pose significant pain and health risks to
15 paraplegics such as the plaintiff, were not *de minimis*). Therefore, plaintiff may not recover for
16 emotional distress caused unless she also shows she suffered a physical injury.

17 **E. Access to the Courts**

18 Plaintiff appears to raise allegations of denial of a fair trial and "abuse of force, to prevent
19 [plaintiff] from speaking on the record," seeming to suggest that unnamed defendants denied plaintiff
20 access to the courts. (See Doc. 1 at 2-3, 7, 9.) Petitioner claims that at a hearing on her civil case, the
21 judge did not allow her to speak and ruled against her. (Id. at 15.) This does not state a claim.

22 All inmates have a constitutional right to access to the courts. See Lewis v. Casey, 518 U.S.
23 343, 346 (1996); Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009); Ching v. Lewis, 895 F.2d 608,
24 609 (9th Cir. 1990). However, this right is limited to challenging their criminal conviction via direct
25 appeal, collaterally through a habeas corpus petition and to vindicate civil rights in actions brought
26 under 42 U.S.C. § 1983. Lewis, at 353, n. 3, 354-355. This right is guaranteed only at the pleading
27 stage and does not include the right to discover the cases or to litigate them effectively once they are
28 filed. Id. at 354-355.

1 In addition to demonstrating official acts frustrating the inmate's litigation, where a prisoner
 2 asserts a backward-looking denial of access claim, he must show the loss of a "nonfrivolous" or
 3 "arguable" underlying claim. See Christopher v. Harbury, 536 U.S. 403, 413-414 (2002). The
 4 underlying claim must be set forth in the pleading claiming a denial of access to the courts "as if it
 5 were being independently pursued." Id. at 417. Finally, the plaintiff must specifically allege the
 6 "remedy that may be awarded as recompense but not otherwise available in some suit that may yet be
 7 brought." Id. at 415.

8 To establish the first element, the inmate must show he suffered an "actual injury." Lewis, 518
 9 U.S. at 348. An "actual injury" is "actual prejudice with respect to contemplated or existing litigation,
 10 such as the inability to meet a filing deadline or to present a claim." Id. The failure to demonstrate an
 11 actual injury is jurisdictional. Alvarez v. Hill, 518 F.3d 1152, 1155 (9th Cir. 2008) ("Failure to show
 12 that a 'nonfrivolous legal claim had been frustrated' is fatal").

13 Plaintiff fails to set forth sufficient allegations to support a claim regarding access to courts.
 14 Should the plaintiff wish to pursue such a claim, she shall consider the above legal standards.

15 **F. Bias**

16 Plaintiff asserts that she filed a lawsuit against the Kern County District Attorney's Office
 17 around March 10, 2014 seeking \$48,000,000, and claims several former members of that office are
 18 now judicial officers on the Kern County Superior Court, which "controls the Bakersfield U.S. District
 19 Court Jury [selection], resulting in bias by "all Judges at the United State[s] Court on 19th Street
 20 Bakersfield, CA." (Doc. 1 at 5-8, 12.)

21 "Whenever a party to any proceeding in a district court makes and files a timely and sufficient
 22 affidavit that the judge before whom the matter is pending has a personal bias or prejudice either
 23 against him or in favor of any adverse party, such judge shall proceed no further therein, but another
 24 judge shall be assigned to hear such proceeding." 28 U.S.C. § 144; see also Pesnell v. Arsenault, 543
 25 F.3d 1038, 1043 (9th Cir. 2008), abrogated on other grounds in Simmons v. Himmelreich, 136 S. Ct.
 26 1843 (2016). Section 144 expressly conditions relief upon the filing of a timely and legally sufficient
 27 affidavit. United States v. Azhocar, 581 F.2d 735, 738 (9th Cir. 1978).

1 A judge must disqualify himself if "his impartiality might be reasonably questioned," 28
2 U.S.C. § 455(a), or if "he has a personal bias or prejudice concerning a party, or personal knowledge
3 of disputed evidentiary facts concerning a party, or personal knowledge of disputed evidentiary facts
4 concerning the proceeding," 28 U.S.C. § 455(b)(1). However, the bias must arise "from an
5 extrajudicial source" and cannot be based solely on information gained in the course of the
6 proceedings. Pesnell, 543 F.3d at 1043-44 (citing Liteky v. United States, 510 U.S. 540, 114 S. Ct.
7 1147 (1994)).

8 "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality
9 motion." Id. at 1044 (quoting Liteky, 510 U.S. at 555). "In and of themselves . . . they cannot possibly
10 show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the
11 degree of favoritism or antagonism required . . . when no extrajudicial source is involved." Liteky, 510
12 U.S. at 555. Judicial bias or prejudice formed during current or prior proceedings is sufficient for
13 recusal only when the judge's actions "display a deep-seated favoritism or antagonism that would
14 make fair judgment impossible." Id.; Pesnell, 543 F.3d at 1044. "[E]xpressions of impatience,
15 dissatisfaction, annoyance, and even anger' are not grounds for establishing bias or impartiality, nor
16 are a judge's efforts at courtroom administration." Pesnell, 543 F.3d at 1044 (quoting Liteky, 510 U.S.
17 at 555-56).

18 The objective test for determining whether recusal is required is whether a reasonable person
19 with knowledge of all the facts would conclude that the judge's impartiality might reasonably be
20 questioned. United States v. Johnson, 610 F.3d 1138, 1147 (quotation marks and citation omitted).
21 "Adverse findings do not equate bias." Id. at 1148.

22 Plaintiff has not provided any arguments that tend to show bias. Plaintiff's naked assertions
23 that several former members of the Kern County District Attorney's Office are now judicial officers²
24 are not sufficient to show bias. Accordingly, the Court will dismiss any such claims with leave to
25 amend.

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28 ² Notably, none of the judges holding court at the 19th street courthouse has ever been Kern County Assistant District Attorneys.

1 **VI. Conclusion and Order**

2 Plaintiff has not alleged sufficient facts to support her claims. However, the Court will provide
3 plaintiff with one opportunity to file an amended complaint that sets forth facts sufficient to support
4 her claims. See Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987); see also Lopez, 203 F.3d at
5 1128 (dismissal of a *pro se* complaint without leave to amend for failure to state a claim is proper only
6 where it is obvious that an opportunity to amend would be futile). The amended complaint must
7 reference the docket number assigned to this case and must be labeled “First Amended Complaint.”

8 Plaintiff is advised that an amended complaint supersedes the original complaint. Forsyth v.
9 Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).
10 In addition, the amended complaint must be “complete in itself without reference to the prior or
11 superseded pleading.” Local Rule 220. Once plaintiff files an amended complaint, the original
12 pleading no longer serves any function in the case. Finally, plaintiff is warned that “[a]ll causes of
13 action alleged in an original complaint which are not alleged in an amended complaint are waived.”
14 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1986) (citing London v. Coopers & Lybrand, 644 F.2d
15 811, 814 (9th Cir. 1981)). Based upon the foregoing, the Court **ORDERS**:

- 16 1. Plaintiff’s complaint is **DISMISSED** with leave to amend; and
- 17 2. Within thirty days from the date of service of this order, plaintiff **SHALL** file a first
18 amended complaint or a notice of voluntary dismissal of the action.

19 **If plaintiff fails to comply with this order to file a first amended complaint, the action may be**
20 **dismissed for failure to prosecute and failure to obey the Court’s order.**

21
22 IT IS SO ORDERED.

23 Dated: December 27, 2020

/s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE
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